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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 402

CHARLIE LOVE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

CHARLIE LOVE,
Pro se.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Charlie Love, is seeking certiorari in this case to review a decision of the Circuit Court of Appeals for the Fourth Circuit affirming a Judgment of the District Court for the Middle District of North Carolina, Wilkesboro Division. Said Judgment having been affirmed by the United States Circuit Court of Appeals for the Fourth Circuit on the 9th day of October, 1948, by case No. 5763.

Petitioner is at present time on bond.

The Respondent is the United States of America.

Statement

The petitioner contends that error was committed by the trial court and that the Circuit Court of Appeals committed error in affirming the action of the trial court, and that such errors deprived him of his constitutional rights as guaranteed to him under the 4th Amendment to the Constitution of the United States.

The present action was instituted by an indictment at the May term of the United States District Court for the Middle District of North Carolina on the 20th of May, 1948, at Wilkesboro, North Carolina, charging the appellant, Charlie Love, with violation of the Internal Revenue Law as set out by four counts in the Bill of Indictment, first count charging possessing of a still without having registered same. Second count, carrying on the business of a distillery without having given bond. Third count made and fermented mash fit for distillation on premises other than a distillery. Fourth count possessing distilled spirits in containers which did not have the required stamps affixed thereto.

On the 6th day of May, 1948, United States Deputy Marshal Walter M. Irwin had a warrant for the arrest of Ray Foster and that he had information that the said Ray Foster was staying either at the home of his mother or at Charlie Love's home or at least one other place in that community, that Deputy Marshal Irwin called A.T.U. agents Dotson and Kiefer to go with him and assist in making the arrest of Ray Foster. That after first searching the home of Ray Foster's mother they then went to the home of Charlie Love which was some 400 yards away. That while the A.T.U. agents surrounded the house Marshal Irwin knocked on the front door and when Charlie Love answered Marshal stated that he was looking for Ray Foster, Love stated that Foster was not there, Irwin then said that he would have to look and then entered the house. Neither Marshal Irwin

or the A.T.U. agent had any search warrant or other process for Charlie Love except the warrant Marshal Irwin had for Ray Foster. Neither of the witnesses ever saw Ray Foster at the home of Charlie Love or knew of him being any relation to Charlie Love. A.T.U. agent Dotson had information some thirty days prior to this time that Charlie Love was operating a distillery in his basement. When Marshal Irwin entered the house and as he entered one of the rooms of the house he came upon a filtering plant consisting of a filtering bag and a wash tub in operation. Whereupon he called A.T.U. agent Dotson who came in and took charge and placed Charlie Love under arrest for possession of distilled spirits. And on continuing the search there was a total of approximately 400 gallons of distilled spirits in the house and when the A.T.U. agent searched the basement they found a distillery complete and 22 50 gallon fermenters with 1,000 gallons of spent mash, and an 85-gallon still which had recently been operated. The officers were unable to find Ray Foster in the home of Charlie Love.

After the search the petitioner was brought before the United States Commissioner and required to give bond.

Petitioner in apt time filed motion to suppress the evidence and at the trial of this case pleaded not guilty, and waived trial by jury and consented for the court to find the facts. Furthermore, the defendant also objects without waiving his rights to question the competency of the evidence, and consented that the evidence offered in connection with the motion to suppress may be regarded as evidence in this case but over the objection of the defendant on the grounds that the evidence was illegally obtained and that the evidence is incompetent.

The court at the close of the evidence overruled the motion to suppress, found the defendant guilty as charged in the Bill of Indictment, and pronounced sentence.

Jurisdiction

Jurisdiction of this Court is invoked under Sections 237(b) and 240(a) of the Judicial Code as amended by the Acts of February 13, 1925, in Title 28 U.S.C.A., Sections 344(b) and 347(a), also Act of March 8, 1934.

Questions Presented

1. Were the petitioner's rights as guaranteed to him under the Fourth Amendment violated by the search of the petitioner's home without a search warrant?

2. Did the Circuit Court of Appeals err in affirming the judgment of the trial court?

Reasons for Allowance of Writ

1. The Circuit Court of Appeals held that the search was legal and affirmed the District Court's judgment in denying the motion to suppress evidence and quash the Bill of Indictment which is contrary to the Fourth Amendment of the Constitution of the United States and also contrary to the decision of the Supreme Court of the United States in the cases of *Weeks* v. *United States,* 232 U. S. 387; *Agnello* v. *United States,* 269 U. S. —; *Marrion* v. *United States,* 48 S. Ct. 75; *Carroll* v. *United States,* 267 U. S. 132; *Taylor* v. *United States,* 286 U. S. 1, 6; *Harris* v. *United States,* 331 U. S. 145; *Davis* v. *United States,* 328 U. S. 582.

The Fourth Amendment forbids every search that is unreasonable and is construed liberally to safeguard the right of privacy. *Byars* v. *United States,* 273 U. S. 28, 32, 47 S. Ct. 248, 71 L. Ed. 520. Its protection extends to offenders as well as to the law-abiding. *Weeks* v. *United States,* 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915 C. 1177; *Agnello* v. *United States,* 269 U. S. 20, 32, 46 S. Ct. 4, 70 L. Ed. 145, 51 A. L. R. 409. The authority of officers to search one's house or place of

business contemporaneously with his lawful arrest therein upon a valid warrant of arrest certainly is not greater than that conferred by a search warrant issued upon adequate proof and sufficiently describing the premises and the things sought to be obtained. Indeed, the informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime. *United States* v. *Kirschenblatt* (C. C. A.), 16 F. (2d) 202, 203, 51 A. L. R. 416; *Go-Bart Co.* v. *United States, supra,* 282 U. S. 358, 51 S. Ct. 153, 75 L. Ed. 374.

In this case the officers did not have the quality of knowledge or information that is necessary to cause a search warrant to issue, but had information that Ray Foster would be either at the home of his mother, or at the home of Appellant or at some other place in the community, so under the pretext or excuse of probable cause and with one of the officers having information that a distillery was being operated in the home of Petitioner these officers searched houses in that community at will, and with disregard for the rights of the people secured them under the fourth amendment of the constitution. There were three places searched that night and no arrest made of Ray Foster.

In *Angello* v. *United States,* 269 U. S. —, Justice Butler says: "While the question has never been directly decided by this Court it has always been assumed that one's house cannot lawfully be searched without a search warrant except as incident to a lawful arrest therein. There was no lawful arrest in the home of Appellant upon which to base a search

but rather a search, without a warrant upon which an arrest was based. Of what value is the fourth amendment or any other of the amendments that make up the bill of rights and guarantees which were guaranteed us by the framers of the constitution? How can there be freedom of thought, freedom of speech or freedom of anything, or how can we American citizens be free from illegal search and seizures if the police can search your house and mine at will simply because they are armed with a warrant of arrest for someone with whom we are not in any way associated and whom someone has told them might be staying at either my home or yours?

This case differs from *Harris* v. *United States*, 331 U. S. 145 in that the warrant was for the arrest of Harris and not for another party. Judge Frankfurter dissenting says, "To find authority for ransacking a home merely from the authority for the arrest of a person is to give a novel and ominous rendering to a momentous chapter in the history of Anglo-American freedom. Authority to arrest does not dispense with the requirements of authority to search. While a few of the lower Courts have uncritically and unwarrantedly extended the very limited search without warrant of a person upon his lawful arrest, such a policy is hostile to the policy of the amendment and is not warranted by the precedents of this court."

To permit a search of this character, converts a warrant for the arrest of any person into a general search warrant, lacking all of the constitutional safeguards, is demonstrated most plainly by the fact that three homes were searched and no arrest made on the warrant in question, and no evidence uncovered pertaining to the crime for which the warrant was issued; nor was there any probable cause or any basis for an oath or affirmation which could justify a valid search warrant; no evidence charged in the warrant of ar-

rest had been found; no prosecution of Appellant for any crime had developed. Strict limitations have been placed upon searches and seizures without a warrant in connection with a lawful arrest as are shown in *Marron* v. *United States*, 275, U. S. 192.

Certainly the constitution is not dependent upon the whim or convenience of law enforcement officers. A search should not be made without a warrant where the opportunity for the issuance of a warrant exists. *Carroll* v. *United States*, 267 U. S. 132; *Taylor* v. *United States*, 286 U. S. 1, 6.

The fourth amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath, or affirmation, and particular describing the place to be searched and the thing to be seized.

When a search degenerates into a general exploratory crusade probing for everything and everybody, with a wanton disregard for the privacy of the homes, then the constitution steps in to protect the individual. The right to be let alone, to be secure, except under responsible judicial compulsion is exactly what the fourth amendment meant to express and to safeguard.

WHEREFORE, Your petitioner prays, That a writ of certiorari issue out of and under the seal of this Honorable Court directing the United States Circuit Court of Appeals for the Fourth Circuit to certify and send to this Court for its review, as provided by law, this case and a complete transcript of the records and all the proceedings had herein; to the end that this case may be reviewed and determined by this Honorable Court as provided by the Statute of the United States, and that the Judgment herein of the United States Circuit Court of Appeals for the Fourth Circuit

may be reversed and that the petitioner may have such other and further relief in the premises as this Court may deem proper.

CHARLIE LOVE,
Petitioner;
T. R. BRYAN,
Counsel for Petitioner.

This the 4th day of Nov., 1948.

(9260)